INDEX.

ABANDONMENT.

Where one is entitled to a contingent interest in two slaves under a deed, and afterwards the same grantor makes another deed conveying the same slaves and much other property in trust for the prior grantee and others, giving an indefeasible interest in the whole to each one, and such prior grantee acts as trustee, sells all the other property but the two slaves, distributes the proceeds, and takes his share of them, it was *held* that he was to be considered as having abandoned his claims under the former deed, and therefore that the two slaves must be sold under the second deed and distributed as the other property had been. *Brame v. Brame*, 280.

ABSCONDING DEBTOR.

Vide "Privy in Judgment."

ADMINISTRATOR.

A court of equity in this State will not interfere to prevent the administrator of a deceased member of a firm from retaining, out of the individual assets of his intestate, satisfaction for a debt due him from the firm. *Hassell v. Griffin*, 117.

ADVANCEMENT.

1. Where an intestate had put slaves into the possession of his child, and afterwards made a deed of gift of them, the advancement must take effect and be estimated as of the date of the deed and not of the commencement of the possession. *Shiver v. Brock*, 137.
2. Property put into the possession of a child, on his setting out in life, suitable to house-keeping and family purposes, is not to be considered as a present, but as an advancement. *Ibid.*
3. Property given to grandchildren is not liable to be brought into hotchpot. *Ibid.*
4. Where a share in a residuary fund is given to persons that had been advanced by deeds of gift, which are ratified by the will, there is no reason why they should account for their advancements before they take such share. *Oden v. Windley*, 440.
5. Grandchildren taking in their own right are not liable for advancements. *Skinner v. Wynne*, 41.

Vide "Statute of Limitations," 5.

AGREEMENT.

There is no remedy in equity against the heirs at law of one who has violated his parol agreement to devise to the complainant the land descended. *Morgan v. Tillet*, 39.

ASSENT TO A LEGACY.

1. A legacy is given upon condition that a certain sum of money due the legatee is not collected by him after the testator's

death; the money is, however, collected before the testator's death; the executrix, notwithstanding this, assents to the legacy and gives it over to the legatee; she cannot sustain a bill to have the property restored to her upon the ground that when she assented to the legacy she was *ignorant* that she was herself entitled to a life-estate in that property, no fraud or unfair means to obtain her assent being alleged. *Foulkes v. Foulkes*, 260.

2. Where there are outstanding trusts to be performed by an executor in respect to property bequeathed to one for life and then over, it is the executor's duty to give a *special* and not a *general* assent, and he may require a bond from the life-tenant for the forthcoming of the property when the life-estate falls in. *Lowe v. Carter*, 377.

Vide "Executor," 2, 3.

ASSIGNMENT OF A CHOSE IN ACTION.

1. The transfer of an equitable chose in action, to be entitled to the protection of a court of equity, must be founded on a valuable consideration. *Cannady v. Shepard*, 224.
2. The compromise of a controversy wherein the legal owner of a chose in action supposed he was bound to the performance of an onerous and oppressive contract, when in truth he was not, is not such a sufficient consideration as will entitle the transferree to a decree for a specific performance. *Ibid.*
3. Where the contract sought to be enforced is hard and oppressive, this Court will not interfere to enforce a specific performance, but will leave the parties to their remedies at law. *Ibid.*
4. In an assignment of interests resting in grant, if there be no fraud, the purchaser must depend, to make good a deficiency of value, wholly upon his covenants. *Cansler v. Eaton*, 499.

AUCTION SALE.

Vide "Concealment of Title."

BONDS.

Vide "Constitutionality of a Law."

BREACH OF TRUST.

Where a trustee admits the allegation in a bill that he has committed a breach of trust in giving a release, and the release does not meet the allegation that he has contrived to obtain such release, but states immaterial matters as his answer, the Court will decree against them both. *Jones v. Poston*, 184.

CAVEAT EMPTOR.

1. Where one of the legatees of an estate, being also an executor, by the consent of those interested buys property at the executor's sale, not for the purpose of a division, but simply for his own gain and emolument, he must abide by the rule of *caveat emptor;* and unless he avers and proves a warranty, or a fraud practiced upon him, must bear the loss arising from unsoundness. *Parker v. Leathers*, 248.

2. The maxim *caveat emptor* does not apply in cases where the parties are placed in a confidential position between themselves; for in such cases there is an implied warranty of soundness as well as of title. *Nixon v. Lindsay*, 230.

CHARTER.

Vide "Constitutionality of a Law."

CHEROKEE LANDS.

Vide "New Trial," 3.

CHILDREN.

Vide "Construction of a Will."

CLERK AND MASTER.

Vide "Reference to Commissioners," 2, 3, 4.

CODICIL.

1. The office of a codicil, ordinarily, is to vary by adding to or taking from a will, but not wholly to supplant it. *Bradley v. Gibbs*, 13.

2. In construing a codicil in reference to the will, the leading and controlling object is, as it is in construing the will itself, to ascertain the intention of the testator. *Ibid.*

Vide "Construction of a Will," 5.

CONCEALMENT OF TITLE.

Where A, having an unregistered deed for half of a tract of land, stands by and sees the same sold at public auction by a trustee as the land of another, and permits B to buy it and afterwards to pay the purchase-money and take a deed for it from the trustee under an impression that he was getting a good title for the whole, which impression is well known to A, and he does not disclose his title at such auction sale nor say anything about it at that time nor afterwards before the money is paid, such concealment is a fraud upon B, and a court of equity will compel A to convey his moiety to B upon the repayment of what he gave for such moiety. *Saunderson v. Ballance*, 322.

CONCURRENT REMEDIES.

Where vendees of property filed a bill in equity against the vendors, alleging a fraudulent misrepresentation and great losses arising from defects in the property and praying a rescission of the contract, the Court will not compel the plaintiff to choose between releasing a recovery at law for the fraud, obtained during the pendency of the bill, and dismissing the bill (the sum recovered at law not having been accepted by the plaintiff), but will permit them to proceed with their suit in equity, and, in case of a recovery in that court, to take the benefit of whichever recovery may appear the more adequate. *Pettijohn v. Williams*, 356.

CONFIRMATION OF A GIFT.

Where it appears to have been the intention of the testator to confirm a parol gift of a female slave, previously made, the issue

of such slave, born before such bequest, will pass, though no mention is made of such issue in the will. *Woods v. Woods*, 420.

Vide "Construction of a Will," 19.

CONFUSION OF BOUNDARIES.

Where the assignee of the grantor of an easement tore away the dam at the head of a race, and filled up the race theretofore laid out and used, and ploughed over it so as to efface the limits of it, against the remonstrances of the grantee, equity will grant relief by issuing a commission to re-mark the site of the race, and order an account for loss of profits. *Merrimon v. Russell*, 470.

CONSIDERATION.

An agreement between A and B that the former, the father of a girl who had been debauched and got with child by B, would take the child and its mother and support them for three years; that he would, further, discourage his daughter from swearing the child, and would give up his action of damages, in consideration that B would convey him a tract of land, is not immoral or against the public policy. *Self v. Clark*, 309.

Vide "Assignment of a Chose in Action," 1, 2, 3.

CONSTITUTIONALITY OF A LAW.

1. An act of the Legislature authorizing the commissioners of an incorporated town to subscribe to the stock of a company incorporated for the purpose of improving the navigation of a river contiguous to such town is not forbidden by the Constitution. *Taylor v. Commissioners*, 141.
2. It does not make a difference that the improvement contemplated by the act is to begin several miles above the town, and to pass through several other counties than the one in which the town is situated. *Ibid.*
3. Nor does the Constitution forbid the Legislature to pass a law authorizing such commissioners to make their bonds to meet such stock subscription, and to levy a tax to pay the principal and interest thereof. *Ibid.*

CONSTRUCTION OF A DEED.

1. Where land descended from A to his daughter B, and from her to her uncle C, who took an estate in reversion after a life-estate in the mother of B, it was *held* that a deed made by C, conveying *"all my interest in my brother A's property,"* did not pass this interest derived from his niece B. *Allen v. Allen*, 235.
2. In a suit for a partition by sale by one tenant in common against the co-tenants, where the petitioner is in possession of the land, and the interest sought to be sold is a reversion, although the tenancy in common is denied by the defendants, inasmuch as an ejectment cannot be brought by the plaintiff to determine this right at law, a court of equity will proceed to determine the matter; especially where the question of tenancy depends merely upon construction. *Ibid.*

INDEX.

CONSTRUCTION OF A WILL.

1. Where a father in his will alludes to an expectancy that the children born to him of one marriage had of a legacy from their maternal grandfather, and provides that should these children get property from this source it is to be divided in certain proportions between all his children (including those of another marriage), and postpones the division of his own property for two years, and within that time property does come to these children by the death of their grandfather: *Held*, that this is a case coming within the principles that constitute the doctrine of *election*. *McQueen v. McQueen*, 16.

2. A bequest of slaves to C. (a married woman) and after her death, and the death of another, to *fall to her heirs*, there being nothing in the context to vary the meaning of the language from its legal purport, was *held* to be within the rule in Shelly's case, and to give the absolute property to the husband of C. *Kiser v. Kiser*, 28.

3. The word heirs, when applied, in a will of personal property means those who take by law or under the statute of distributions. *Ibid.*

4. A true and certain description of a slave by name in a will cannot be obviated by a further and unnecessary description which is untrue. *Joiner v. Joiner*, 68.

5. Where a will contains a clear and unanimous disposition of property, it shall not be allowed to be revoked by a doubtful expression in a codicil. *Ibid.*

6. A bequest of "all my property of every description" to "my good friend and relative," J. B. O., shows an intention to appoint "a universal legatee," and, therefore, not only tangible property, but monies, stocks, bonds and choses in action were held to pass by this bequest. *Hurdle v. Outlaw*, 75.

7. A testator devised as follows: "I give to my daughter E. a farm, etc., and after my wife's death I wish the land sold and the proceeds divided among my children and their heirs"; it was *held* that the effect of this clause was to make the land personal estate from the time it was ordered to be sold, and that the proceeds were distributable as personal estate. *Brothers v. Cartwright*, 113.

8. The word *heirs*, as applied to personal estate, means those who would take according to the state of distributions. *Ibid.*

9. Where a testator, having a brother and sister, his next of kin, the brother having two daughters and the sister three sons, devises in several preceding clauses estates to the brother and to the sister, and to the children of each respectively, and gives to the brother and sister no other estate or interest in any part of the will, and concludes with a residuary clause as follows: "The rest and residue I wish to be equally divided between the children of my brother, J. S. C., and my sister, N. A. A.": *Held*, that the words "the children of" are to be understood in the last sentence of the clause that both families of children take *per capita*, and that N. A. A. takes no interest under that clause. *Adams v. Adams*, 215.

10. Where one bequeathed personal property to his wife for life, and then to his daughter for her life, and then to her (the daughter) surviving children, it was *held* that the wife's dissent from the

will removed the interposed life-estate, and that the daughter took the property immediately. *Adams v. Gillespie*, 244.

11. Where one-half of the value of a female slave and one-half of her increase were given to the wife and the other half to a grandson, but the hire of all the slaves, including this, had, in a previous part of the will, been given to the wife for life, and then to her daughter for life, it was *held* that the slave should go to the widow, and the interest on the other half of the value be paid to the daughter during her life, and after her death the principal be paid to the grandson. *Ibid.*

12. Where a horse, saddle and bridle were bequeathed to an infant under five years of age, there being no such chattels on hand, the executor was directed not to buy the articles; but it was *held* that in the distribution of the estate the child's share should be augmented by the value of these articles thus pretermitted. *Ibid.*

13. A bequest of "all my slaves" to the testator's wife during her life and then "'I give and bequeath said slaves (with the exception of those I acquired by intermarriage with her, those that I received in the division of my father's estate—old Joe and Ferryman Jim) to W. J. and E.," with this clause in connection: "My will and desire is that the hereinbefore excepted slaves be hired out, etc., to raise a fund for their transportation to Liberia," accompanied with a strict injunction upon the executor to *raise the means* for their transportation, was *held* to mean that the intention of the testator was to liberate all the slaves that he got by his marriage, and their increase since his marriage, and all the slaves he received from his father's estate, and the increase of such since he received them, and old Joe and Ferryman Jim. *Cromartie v. Robinson*, 218.

14. Where property is given by will to a mother for life, then to her children, and on failure of children to others, with a provision that it shall be valued and the value deducted from a share left to her by the same will in the division of a general fund, it appearing to be the intention of the testator to make the families of his several children equal, the value of the fee-simple in the land and the entire estate in the personal property must be charged against the mother in the general division. *Mebane v. Womack*, 293.

15. A bequest to a deceased daughter, and "to the heirs of her body," which is explained in the context to mean the children of such deceased daughter then living, will be construed to pass to such children all that the mother would have taken under such bequest if she had been alive at the testator's death. *Woods v. Woods*, 420.

16. Where a residuary fund is raised by various bequests in a will and a bequest is made of several slaves to one of the residuary legatees, with a direction that these slaves are to be valued, and "if the valuation shall be more than a due proportion of my estate" such legatee is to refund what is over to "my estate," *it was held* that such bequest was not in satisfaction of the legatee's residuary share until the value of it had been added to the residuum, and that the deduction of the value of the legacy was then to be made. *Ibid.*

17. Where one was appointed administrator, and an entry of record made to that effect, and a bond given without security, his appointment is valid. *Jones v. Gordon*, 352.

18. A bequest of "all my other negro slaves to the American Colonization Society" (some being previously willed), passes as well as those held in common with another as those held in severalty. *Ibid.*

19. Where a testator, intending by his will to ratify and confirm parol gifts of slaves long before made to two of his sons, by a mistake describes the slaves that had been given to the one son as those given to the other, and *vice versa*, the Court will declare the testator's intention to have been according to the dispositions by the parol gifts. *Lowe v. Carter*, 377.

20. It is a general rule that where the name or description of a legatee is erroneous and there is a reasonable doubt as to the person intended to be named or described, the mistake will not disappoint the bequest. The same rule applies to the subject of the bequest. *Ibid.*

21. Where in construing a will in order to carry out the intention of the testator it becomes necessary to disregard the technical rules of grammar, the Court will do so. *Ibid.*

22. A bequest "that personal property belonging to my estate to be sold and the proceeds divided," etc., does not embrace the bonds, notes and accounts of the testator. *Ibid.*

23. In fixing the construction of a will, the Court have a right to look to the state of the testator's family and the condition of his property at the time when his will was written. *Woods v. Woods*, 420.

24. A devise of "the tract of land whereupon I now live and reside, containing two hundred and twenty-five acres, more or less," which was made up of an original tract and several others afterwards added, and which had been used by the testator as one plantation, will convey the whole tract thus added to, although the number of acres greatly exceeds that stated in the devise. *Ibid.*

25. Where a residuary fund is bequeathed to "all my legatees, equally to be divided," it was *held* that persons to whom gifts of slaves were confirmed and one dollar in addition given, were entitled to come in for a share under the description of legatees. *Oden v. Windley*, 440.

26. Where a residuary fund is bequeathed "to all my legatees, equally to be divided," it was *held* that one to whom a life-estate was given, remainder to his children, must come in with his children for one share between them. *Ibid.*

27. Where, from the provisions in a will it was manifest that the testator intended to establish entire equality between his children, such purpose is not varied by changes subsequently made by the testator in dispositions by deed of certain parts of the property; and those taking under the deeds subsequently made, will be put to their election. *Flippin v. Banner*, 450.

28. Where all the personal property of a father had been placed by him in the hands of one of his sons to manage the same and dispose of a part of it in legacies as he should afterwards direct in his will (the overplus to belong to this agent who was

afterwards appointed executor), and certain property is sold by the agent to another son, who had been put into possession of it with an intention of its being his; and such property is afterwards bequeathed to the son thus possessed of it, without any knowledge on the part of the testator that it had been sold, it was *held* that this legacy was not adeemed by the previous sale to the legatee, but that it should be made good to him out of the testator's estate. *Patton v. Patton*, 494.

Vide "Codicil"; "Executory Devise," 4.

CORPORATION.

Vide "Constitutionality of a Law"; "Remote Contingency."

CONTRACT.

A promise to pay a debt out of a particular fund which never came to hand is not obligatory. *Bagley v. Sasser*, 350.

CONVEYANCE DECLARED A SECURITY.

1. In order to convert an absolute conveyance into mere security for money loaned, it must be alleged and proven, 1st. That the agreement was that the property should be conveyed as a mere security. 2nd. That the defendant was induced to execute an absolute conveyance by fraud, imposition or undue influence. *Cook v. Gudger*, 172.

2. A mere gratuitous offer to allow the assignor of a title-bond for land to pay back the purchase-money and interest, if done within twelve months, is not a sufficient ground to authorize the Court to convert an absolute conveyance into a security for the money paid. *Ibid.*

3. To convert a deed, absolute upon its face, into a security for a debt in the nature of a mortgage, so as to give a right to redeem, besides parol admissions that the deed was intended as a mere security there must be facts *dehors* the deed inconsistent with the idea of an absolute conveyance, and proof of fraud, oppression, ignorance, or mistake, so as to account for the conveyance being absolute when such was not the intention. *Brothers v. Harrill*, 209.

4. Although there be some facts *dehors* the deed that tend to show a trust, yet if there be other facts perfectly consistent with the idea of an absolute sale, and the repugnancy between the trust sought to be established and the terms of the written instrument is still unexplained, a court of equity will not interfere with the legal rights of the parties by an injunction. *Ibid.*

5. To convert a purchaser who takes a deed absolute on its face into a trustee for another, and to convert the conveyance into a mere security for money loaned or advanced, it must be alleged and proved that the clause of redemption was omitted by reason of ignorance, mistake, fraud or undue advantage, and the intention must be established by facts *dehors* the deed of conveyance which are inconsistent with an absolute conveyance. *Glisson v. Hill*, 256.

COVENANT FOR QUIET ENJOYMENT.

Vide "Remedy at Law."

CREDITOR.

Vide "Fraud," 3; "Fraudulent Conveyance," 1, 2.

CURTESY.

A husband is not entitled to an estate by the curtesy in a mere *equitable right* in the wife which does not amount to an estate. *Sentill v. Robeson*, 510.

DAMAGES.

Vide *"Ne Exeat."*

DEED IN TRUST.

1. A deed in trust, after registration, is viewed in a different light in the Courts of this State from what it is regarded in the English Courts, and is with us considered in the nature of a mortgage. *Stimpson v. Fries*, 156.
2. Where a deed of trust is made, leaving it discretionary with the trustee to pay such debts as he might *think best and find convenient*, it was *held* that the trustor had a right to control the application of this fund by directing what debts should be paid; but that as to any debt the trustee had paid, or had assumed to pay, and as to his own debts, he had a right to retain funds to pay them before he was bound to obey such new directions. *Ibid.*
3. The debts which the trustee under these circumstances had promised by *parol* to pay, come within the principle above declared and are not within the statute of frauds. *Ibid.*

DEMAND.

Vide "Lost Note."

DESCENTS.

1. In the descent of real estate under the act of 1808 the next collateral relations of the person last seized, who are of equal degree, take *per stirpes* and not *per capita*. *Clement v. Cauble*, 82
2. PEARSON, J., *dissentiente*. Under the act of 1808 land descends *per capita* among the next collateral relations who are in equal degree. When those more remote bring themselves up to an equality by right of representation they take *per stirpes*. *Ibid.*

DESCRIPTION.

Vide "Construction of a Will," 4, 20, 24, 25.

DEVISAVIT VEL NON.

Vide "Dissent of a Widow."

DILIGENCE.

1. An executor is not an insurer of the assets of the estate; so that if he acts in good faith and with reasonable diligence he is not responsible for their loss. *Deberry v. Ivey*, 370.
2. Where assets had been collected by an attorney in a distant State and lost by his insolvency, the said attorney being, in public estimation, altogether trustworthy at the time of such employment, the executor was *held* not liable for the loss. *Ibid.*

DISCOVERY.

A court of equity will not entertain a bill for a discovery which seeks to set aside a prior deed of trust on account of usury. *Masters v. Prentiss*, 62.

DISSENT OF A WIDOW.

During the pendency of an issue of *devisavit vel non*, and before the will is admitted to probate, the widow enters her dissent, it was *held* that her dissent is effectual, and that her personal representative is entitled to a distributive share. *Oden v. Windley*, 440.

Vide "Construction of a Will," 10.

DIVORCE.

1. Under the fifth section of the act of Assembly concerning "Divorce and Alimony" (Rev. Stat., ch. 39. sec. 5), a cause cannot properly be sent to the Supreme Court until the material facts charged shall have been found by the verdict of a jury. *Miles v. Miles*, 21.
2. The three years residence required by the act of Assembly, ch. 29, sec. 7, Rev. Stat., of the petitioner in a suit for a divorce, previously to filing a petition or bill, must be an actual residence; and when the wife sues the legal maxim that "her domicil is that of her husband" will not avail in the stead of an actual residence. *Schonwald v. Schonwald*, 307.
3. To entitle the wife to divorce *a mensa et thoro* it is not necesary that the indignities complained of as rendering her condition intolerable and her life burdensome should be a striking or even touching of the body, but foul and injurious accusations often repeated, with a withdrawal of all intercourse, refusing to bed with his wife, and a denial that she is his wife, with threats against her life, are sufficient indignities to entitle her to this relief. *Coble v. Coble*, 392.

DOWER.

1. The jurisdiction of courts of equity over the subject of dower is well established. It is often the most convenient and sometimes the only jurisdiction that can afford the appropriate relief. Especially is this the case when the widow seeks to be endowed of an equity of redemption. *Campbell v. Murphy*, 357.
2. There is no statute of limitation in regard the writ of dower; and if her case be not affected by the statute of presumptions the widow is not bound to account for a delay. *Ibid.*
3. If there be no prayer against the administrator he is not a necessary party to a bill for the assignment of dower. *Ibid.*
4. The right of a widow to dower is a *legal right;* it is *prior* to that of the heir, and his vendee is not protected by a want of notice and payment of a full price. *Ibid.*
5. A widow is not entitled to have dower of the improved value of her husband's estate, but she must take it according to the value as it was in her husband's life-time. *Ibid.*
6. A widow is entitled to a part of the insurance money arising upon the destruction of buildings in which she had an equitable claim to dower. *Ibid.*

7. She is also entitled to a third of the rent accruing thereon between the death of her husband and the decree of assignment. *Ibid.*

EASEMENT.

1. The words "so much of my land lying, etc., as will conveniently carry water to a saw-mill so as to be to his profit and advantage," contained in a deed convey no interest in the soil, but an easement or privilege to have sites and race for a mill-dam and to pond back the water, with the right of ingress and regress to repair, etc. *Merriman v. Russell*, 470.
2. And without words of inheritance such a right is by construction given so long as the grantee and his heirs and assigns may wish to run the mill. *Ibid.*

ELECTION.

1. Where the persons put to an *election* by a bequest are infants, the Court will order a reference to the Master to enquire concerning the relative values of the two interests, and will direct the election to be made of that which shall appear to be more advantageous for them. *McQueen v. McQueen*, 16.
2. Where a legacy to an infant is charged with the payment of a sum of money, the Court of Equity will order a reference to the Master to ascertain whether it will be to the infant's advantage to accept of the legacy with the burthen, and will direct according to such ascertainment. *Ibid.*

Vide "Concurrent Remedies"; "Construction of a Will," 1.

EMANCIPATION.

1. The next of kin have no interest in slaves bequeathed to one to be emancipated, and cannot properly bring suit in regard to them in their own names. Only the State or the slaves themselves are interested in the question. *Hurdle v. Outlaw*, 75.
2. *Aliter*, where slaves are bequeathed in secret trust to be held nominally as slaves, but really as free persons. In such a case the bequest would be void and the next of kin might claim the slaves. *Ibid.*

Vide "Construction of a Will," 13.

ENDORSEMENT.

Vide "Equal Equities," 2.

EQUITY OF REDEMPTION.

Vide "Dower."

EQUAL EQUITIES.

1. Where equities are equal in point of merit, and the junior equity in point of time gets the legal estate, a court of equity will not interfere in favor of the prior equity. *Carroll v. Johnston*, 120.
2. Where one, without a notice of a prior equity, for a valuable consideration obtains a transfer of a note as a security for debts due him, he may protect himself, even after such notice, by taking an endorsement of the note, thus acquiring a legal

title in aid of his equity, and the two rights thus united will prevail in a court of equity. *Baggarly v. Gaither*, 80.

3. Where equities are equal the law prevails, but if the party having the right at law acquires another interest inconsistent with his equity, so that he cannot honestly claim both, his equity is impaired, and the rule *qui prior est in tempore, portior est in jure* prevails. *Ellis v. Durham*, 465.

EQUALITY.

Vide "Construction of a Will," 14, 27.

EVIDENCE.

Vide "*Feme Covert*," 5.

ESTOPPEL.

Vide "Former Judgment," 1, 2.

EXECUTOR.

1. The Court will not allow a trustee to charge five per cent. for receiving and paying over dividends on bank stock. *Turnage v. Green*, 63.

2. Where executors have been led by statements of the will under which they act to believe that the fund therein set apart for the payment of debts is sufficient for that purpose, and thus believing have assented to the legacies and let all the other property pass out of their hands, and it turns out that the fund provided for the debts, although prudently managed, is insufficient to discharge the same, such executors may call upon the legatees in equity to make good to them advancements made to the creditors out of their own means. *Alexander v. Fox*, 106.

3. A resident of this State by his will bequeathed to A, the wife of B, certain slaves and other personal property, and appointed B and his wife executors. B and his wife were residents of another State, and though B caused the will to be proved, he did not give the bond required by the law of this State to entitle a non-resident to letters testamentary, nor obtain such letters, but took possession of the property bequeathed to his wife, and after using it as his own for nearly twenty years died leaving his wife surviving: *Held*, that by this possession and use the property did not vest in him as husband, but belonged to his surviving wife. *Hairston v. Hairston*, 123.

4. Whether he was entitled to the profits received and used by him—*quære? Ibid.*

5. What is the effect of an assent to a legacy by an non-resident executor who dies without qualification—*quære? Ibid.*

6. It is a general doctrine of the common law recognized in this State that no suit can be brought or maintained by any executor or administrator, or against any executor or administrator in his official capacity, in the courts of any other country or State except that from which he derives his authority to act, in virtue of the probate and letters testamentary or the letters of administration there granted to him. *Brookshire v. Dubose*, 276.

7. This principle is not varied by the fact that a part of the assets of an estate have been recovered by an administrator appointed in another State, suing in his individual capacity in a court in this State upon promises made him by the defendant, and by such defendant seeking to enjoin the judgment. *Ibid.*

8. A legacy given to an executor does not deprive him of commissions, unless it is expressly mentioned as being in *lieu* of them. *Oden v. Windley*, 440.

9. It is no part of the duty of a trustee, appointed to sell for the payment of debts, to put slaves conveyed in the trust deed out as apprentices to trades, and he is liable to account for the value of the services of such slaves during such apprenticeship. *Sparkes v. Kearney*, 481.

10. An administrator or trustee appointed to sell who keeps back certain slaves to await the event of a suit pending against him (involving their title is not bound to account to the next of kin for their hires before the decision of the suit. *Ibid.*

11. Where a husband devised and bequeathed his property, real and personal, to his wife, with certain powers and trusts to be performed by her for the use of their children, and she, being executrix, assented to the legacy, an administrator *de bonis non* of the husband has no claim to have the estate. *Carson v. Duffy*, 507.

12. The children in the above case should have been made parties, and the administrator *de bonis non* of their father could not represent their interest. *Ibid.*

Vide "Assent to a Legacy," 2; "Diligence."

EXECUTORY DEVISE.

1. The expression *all my nephews and nieces* in a bequest includes nephews and nieces of the *half blood* as well as of the whole blood. *Shull v. Johnson*, 202.

2. "My nephews and nieces that may be living at or after my decease" in a will embraces as well those nephews and nieces who are born after the testator's death as those who were living at his death. *Ibid.*

3. Great nephews and nieces will not be included in such a bequest. *Ibid.*

4. Where there is nothing in a will to show an intention that the legatees shall take by families, they take *per capita*. *Ibid.*

FEME COVERT.

1. Where a contract in writing, made in contemplation of marriage, and signed by the intended husband and wife, does not expressly exclude the intended husband, but gives him a joint use in the property with the intended wife during her life, she is not such a "free-trader" as to make her bond obligatory on her in equity, although the debt was contracted upon the faith of the property contained in the settlement. *Freeman v. Moses*, 22.

2. Where a trust estate is created by a will, and a general plan laid down for the guidance of the trustee wherein it is declared to be the purpose of the testatrix that the trust property *should be secured and settled upon three* DAUGHTERS *and their children respectively; "and the more effectually to carry into execution*

the will" it gives the property to the trustee "to hold in trust for *the sole* use and benefit of the daughters and their heirs forever": *Held*, that the trust being executory, the plain intention of the testatrix should be carried out by giving the separate use of the property to the wives for life, with a remainder to their children, as well those born in the life-time of the testatrix as those born afterwards. *Saunders v. Edwards*, 134.

4. A husband's estate after his death is not liable for the debts of his wife contracted by her *dum sola;* and although such estate may get the very property for which the debt was contracted, and (the wife being insolvent) a surety may have to pay the debt, yet such surety has no relief in equity. *Cureton v. Moore*, 204.

5. The admissions of a husband are not competent to affect the sole and separate interest of his wife. *Bagley v. Sasser*, 350.

6. A parol promise by a husband to pay for land settled by third persons on his wife and children is void under the statute of frauds, etc. *Ibid.*

FORMER JUDGMENT.

1. A plea of former judgment, in order to amount to a bar, must be for the same subject-matter as well as between the same parties. *University v. Maultsby*, 241.

2. Therefore where a party brought a suit supposing he had the title, which suit was decided against him, it is no bar to another suit brought by him after acquiring a title. *Ibid.*

FRAUD.

1. Where the admitted facts of a case were of an *extraordinary* character, and showed that the plaintiff, who was an intemperate man, with his faculties much impaired by that vice, was the victim of a gross imposition in the purchase of a stock of goods, the Court will afford relief, notwithstanding it does not fully appear from the proof that at the time of the trade he was absolutely drunk. *Freeman v. Dwiggins*, 162.

2. It is too late for a party to complain of a fraud in the quality of the thing sold and seek for a rescission of the contract after he has used it for two years, has attested its qualities, has assigned his interest in it, and the thing itself has so deteriorated in value that it cannot be restored in the same plight and condition as when it was received by him. *Pettijohn v. Williams*, 356.

3. Where a person, being insolvent, placed money in the hands of one of his children with a view to assist such child and benefit himself, and thereby to defraud his creditors, a judgment creditor is entitled to follow his debtor's money and to have his debt satisfied out of a tract of land bought with it. *Brown v. Godsey*, 417.

Vide "Concealment of Title."

FRAUDULENT CONVEYANCE.

1. Where a person, much in debt, paid for a tract of land and had a title-bond made to convey to his daughter, an infant, in order to defraud his creditors, a court of equity will entertain a bill to subject the debtor's interest to the satisfaction of a credi-

tor who has got a judgment and an execution with a return of *nothing made*. *Gentry v. Harper*, 177.

2. Where a son receives from his father, without consideration and in contemplation of the father's insolvency, and with the purpose of fraudulently withdrawing that much from the payment of the father's debts, a note on a third person due the father and transfers the same in part payment for a tract of land, the creditors have a right to hold the son liable to the amount of the note, and the land will be held as security for the payment thereof. *McGill v. Harman*, 179.

GIFT.

Vide "Advancement," 2; "Construction of a Deed."

GRAMMATICAL CONSTRUCTION.

Vide "Construction of a Will," 21.

GRANDCHILDREN.

Vide "Advancement."

GRATUITOUS OFFER OF REDEMPTION.

Vide "Conveyance as security."

GUARDIAN.

Vide "Idiot"; "Lunacy"; "Purchase by Trustee at his own Sale."

HEIRS.

Vide "Agreement"; "Construction of a Will," 2, 8; "Per Capita," etc., 3.

HUSBAND AND WIFE.

Vide "Curtesy."

IDIOT.

1. The Court of Equity in this State cannot send the estate of an idiot out of its jurisdiction. But where there is an idiot residing in another State, and having a guardian in such other State and funds in the hands of a guardian in this State, the Court can make an annual allowance for his maintenance, to be paid to the guardian abroad. *McNeely v. Jamison*, 186.

INFANT'S FUNDS.

Where there is a direction in a will for certain funds to be paid into the Clerk's office of a county court of another State for the benefit of certain infants, and there is no such county court in that State, but there is a court of probate having charge of the estate of infants, the executor will be directed to pay into the office of the latter. *Lowe v. Carter*, 377.

Vide "Election."

INCREASE.

1. As a general rule children of a woman slave born after the making of a will do not pass under a bequest of the mother, but if it is manifest from the will itself that such issue was intended

to pass it will be so declared by the Court, and such intention may be manifested by a codicil as well as from something appearing in the will itself. *Joiner v. Joiner*, 68.

2. The issue of a female slave born after the making of a will but before the death of the testator does not pass simply by a bequest of the mother. *Lowe v. Carter.*

Vide "Construction of a Will."

INSURANCE MONEY.

Vide "Dower," 6.

INJUNCTION.

1. Upon a question of dissolving an injunction and sequestration to prevent the removal of property from the State the bill of the plaintiffs will be considered as an affidavit sustaining the allegations on that side; and where, in such a case, the answer of the defendant was evasive as to the allegation of his insolvency, and silent as to the charge of an intention to remove the property, and puts his rights upon a question of law which is doubtful, the Court will continue these orders till the hearing of the cause. *Wilson v. Mace*, 5.

2. Upon a motion to dissolve an injunction on bill and answer, if the answer admits the equity of the plaintiff's bill, but brings forward a new fact in avoidance, the injunction will be continued to the hearing. *Ibid.*

3. Where, to a bill for a special injunction, the defendant, who is an administrator, in his answer makes a formal denial of the matters alleged "according to the best of his knowledge and belief," and also alleges new matter in reply to the plaintiff's equity, the Court will not dissolve an injunction previously ordered. *Ashe v. Johnson*, 149.

4. Where one of two defendants has agreed to do a specific thing for the benefit of the plaintiff, and the other defendant is the holder of a covenant under which it is to be done, also is the holder of the fund out of which compensation is to be made, and is about to part with the fund without making the compensation, the plaintiff has ground for going into a court of equity to restrain it from being put out of his hands. *Ibid.*

5. Stocks in a recently chartered railroad company are to be viewed very differently from government stocks in England, which have a value in the markets of that country readily ascertainable. *Ibid.*

6. Where a bill for an injunction is answered by the administrator of one who is alleged to have been a party to an equitable contract, and such administrator says that he is ignorant of the facts alleged in the bill, but that he has understood and believes them to be totally different from those alleged, and such statement is strengthened by some of the allegations in the bill itself, and appears probable and consistent, the injunction will be dissolved. *Clayton v. Lyle*, 188.

7. Where a memorandum of an agreement made at the time when an absolute note was given, and the attendant circumstances show that such note was not to be absolute in reality, but was only to be collected on a contingency which has never happened, a court of equity will relieve against it. *Ibid.*

8. An injunction to stay the execution on a recovery at law in an action of detinue is as much an *ordinary injunction* as one to stay an execution on a judgment for money. In both instances they come within the rules governing ordinary injunctions, unless *irreparable injury* be alleged. *Brothers v. Harrill*, 209.

9. Where irreparable injury is alleged by the plaintiff, and is made apparent by the allegations in his bill, the Court will not dissolve a special injunction simply on the denial in the defendant's answer. *Troy v. Norment*, 318.

10. In assignments of interests resting in grant, if there be no fraud, the purchaser must depend, to make good a deficiency of value, wholly upon his covenants. *Cansler v. Eaton*, 499.

Vide "Mills"; "Remedy at Law," 2.

JUDGMENT—FORMER.

Where, under a will, a tenant in common of slaves, entitled to the share of another on a contingency, joins in a petition for partition setting forth his title under the will and a decree is made for partition generally, such decree is no estoppel to that person's claiming an interest in such slaves which accrued afterwards by the happening of the contingency. *Haughton v. Benbury*, 337.

JUDGMENT AT LAW.

Vide "Concurrent Remedies."

JURISDICTION.

1. Where it appears from the bill itself that the plaintiff had a complete defense at law to a note which was not set up, equity will not interfere to stop the collection of the debt. *Champion v. Miller*, 194.

2. It is no objection to the jurisdiction of the Court of Equity in matters of fraud that the thing fraudulently acquired was only worth $20. *Barnett v. Woods*, 199.

3. In a suit for partition by a sale by one tenant in common against the co-tenants, where the petitioner is in possession of the land, and the interest sought to be sold is a reversion, although the tenancy in common is denied by the defendants, inasmuch as an ejectment cannot be brought by the plaintiff to determine this right at law, a court of equity will proceed to determine the matter, especially where the question of tenancy depends merely upon construction. *Allen v. Allen*, 235.

4. Where the case presented in a bill is one that merely involves a question of legal title, although it sets forth circumstances of hardship, a court of equity cannot interfere. *Cureton v. Moore*, 204.

Vide "Executor," 4.

LAPSED LEGACY.

Where children are named in a will specifically they cannot take as a class, and, therefore, the legacy of one so named, who dies before the testator, lapses, and the rest of the children cannot take it. *Mebane v. Womack*, 293.

LEGACY—ADEMPTION OF.

Vide "Construction of a Will," 28.

LOST NOTE.

Equity does not create law, but follows it. Where, therefore, a bank-note, payable on demand at a particular place, has been lost or destroyed, no remedy will be afforded the owner in a court of equity before a demand has been made for payment at the place designated. *Streator v. Bank*, 31.

LUNACY.

The guardian of an idiot or lunatic cannot, without the permission of the Court, exceed the annual income of the estate in expenditures for and on account of his ward. *Patton v. Thompson*, 411.

MILLS.

Where the erection of a public mill is demanded by the necessities and convenience of the public, and will materially conduce to the advantage of the owner of the mill-seat, the possible result of some small and uncertain injuries to two of the adjacent proprietors of land by overflowing it, and slightly affecting the health of their families, was not deemed by the Court a sufficient ground to interfere by injunction to prevent the work, especially as those proprietors would have a remedy at law if their fears should be realized. *Wilder v. Strickland*, 386.

MISTAKE.

1. When there has been a palpable mistake by a draughtsman in drawing a marriage settlement the Court of Equity will reform it so as to make it express the intention of the parties. *Clemmons v. Drew*, 314.
2. Where parties act upon a mutual mistake as to a fact, equity will relieve for the purpose of carrying the intention into effect; therefore,
3. Where tenants in common of slaves appointed commissioners to make partition among them, which is done, as they suppose, fairly and equally, but it turns out that a slave allotted to one of the shares was at the time laboring under a disorder of an incurable character, which rendered her worthless, though this was not known to any of the claimants or to the commissioners, it was *held* that the owners of the other shares were bound to contribute *pro rata* to the party receiving the defective lot. *Nixon v. Lindsay*, 230.

Vide "Assent to a Legacy," 1; "Reforming a Deed," 1.

MORTGAGOR, ETC.

It is settled upon authority that the mortgaged premises cannot be sold by execution to satisfy the mortgage debt; and whether they can be thus sold at the instance of the mortgagee for any other debt not secured in the mortgage deed, *quære? Thompson v. Parker*, 475.

MORTGAGE.

Vide "Deed in Trust," 1.

MULTIFARIOUSNESS.

1. A bill by several tenants in common of slaves, praying for a sale for partition, and also praying for an account for hires against one not alleged to be one of themselves, is multifarious, and cannot be sustained. *Drew v. Clemmons*, 312.
2. A bill by tenants in common of slaves for a partition cannot be sustained while another is in the adverse possession of such slaves. *Ibid.*
3. A bill is not multifarious because it alleges several grounds in support of the same claim. *Barnett v. Woods*, 199.

NE EXEAT.

1. Where slaves are limited to a female generally, and at her death to another, on the contingency of her dying without issue, and the vendee of the husband of such female, with the fraudulent purpose of defeating the contingent estate, runs them out of the State, such remainder-man after the happening of the contingency is entitled to relief in equity against such vendee. *Haughton v. Benbury*, 337.
2. The measure of relief of the remainder-man is the excess of the value of his contingent interest over that of the first taker at the time of the fraudulent removal; his right to recover in such a case is not defeated or diminished by the death or deterioration of the slaves after such vendee has fraudulently disposed of them. *Ibid.*

NEW TRIAL AT LAW.

1. If a verdict be obtained in a court of law by fraud, circumvention or perjury, a court of equity may decree that the party shall consent to give his adversary a new trial in the same court of law. *Burgess v. Lovengood*, 457.
2. But allegations that a certificate for a pre-emption right was obtained from the commissioners of Cherokee lands by perjury, without specifying the particular perjury and from a mistake by the commissioners, both in respect of the law and facts, are not sufficient to authorize the interference of this Court with the action of the commissioners. *Ibid.*
3. Whether commissioners appointed under the act of Assembly to settle claims of Cherokee lands are not in the nature of arbitrators, and whether in any instance this Court could interfere to review their judgment—*quære? Ibid.*

NUISANCE.

Vide "Mills."

OVERFLOW OF WATER.

Vide "Mills."

PAROL GIFT.

Vide "Confirmation of a Gift."

PAROL PROMISE TO CONVEY.

A parol agreement that B should convey to A one-half of a tract of land which A was conveying to him by a deed absolute upon its face (no fraud, imposition or mistake being alleged), will

not be upheld in a court of equity upon parol evidence alone of such agreement. *Campbell v. Campbell*, 364.

PARTNERSHIP.

Where one of the members of a firm withdraws from it and assigns all the effects to the other partner, under an agreement that such partner shall pay all the firm debts, and he conveys all the effects in payment of his own debts: *Held*, that the firm creditors cannot follow these effects to subject them to the payment of the firm debts. *Rankin v. Jones*, 169.

PARTITION.

1. Where eight witnesses swore that an actual partition could not be made of land without injury to all the parties, and six witnesses said they thought it could be divided if laid off in a particular way, without prejudice to the whole, the Court ordered a sale. *Windley v. Barrow*, 66.
2. A widow takes possession of a part of the land of her deceased husband, having had it assigned for her dower by some of the heirs, the others being out of the State and neither agreeing to or dissenting from this arrangement, and afterwards has most of it regularly laid off by the Court, though a part that was first occupied by her is not finally assigned in her dower, it was *held* that she was not liable to account to the heirs for the profits received from any part of this land. *Roberts v. Roberts*, 128.
3. A brother who leaves the State cannot, when it suits him to file a bill for partition, require those of his brothers who have occupied parcels of the land to pay him a ratable part of the sum for which the parcels might have been rented; the parcels occupied not being more than a ratable part of the whole tract. *Ibid.*
4. Tenants in common are entitled to partition as of right. *Holmes v. Holmes*, 334.
5. The mode of partition between tenants in common, whether by an actual partition at common law or by sale, is a matter to be determined by a court of equity under the act of Assembly, Rev. Code, ch. 82. *Ibid.*
6. It is only upon a petition for a sale for the purpose of partition that the question is involved as to how the interest of the several parties will be affected by the one mode of partition or the other. *Ibid.*
7. Where B, one of eleven heirs at law, represented to A, another heir who owned two-elevenths, that he had purchased eight parts, which, with his own, amounted to nine parts, and they agreed in writing to divide the land between them so as to give A his two-elevenths adjoining his other land, and such agreement was carried into execution by making a dividing line, each taking possession, which was held for nine years without question, upon a bill for specific performance B shall not be heard to say that he was not able to perform because he did not own all the shares he had claimed, but a performance will be decreed. *Jones v. Carland*, 502.

PARTIES.

Vide "Dower," 3; "Executor," 10.

INDEX.

PER CAPITA AND PER STIRPES.

1. Where the two daughters of an intestate died in the life-time of their father, the one leaving two children and the other one, distribution must be made of his effects among these grandchildren *per capita*. *Skinner v. Wynne*, 41.
2. Grandchildren taking in their own right are not chargeable with advancements made to their deceased parents. *Ibid.*
3. Property directed to be sold and "the proceeds of said sale to be equally divided between the bodily heirs of my three daughters" (naming them), will be divided *per stirpes*. *Lowe v. Carter*, 377.
4. Where a general residuary fund is ordered to be "equally divided between my above named children," and in several previous items it is ascertained that the testator meant to confirm previous gifts to the children of his deceased children, the parents to whom such bequests are made being then dead, and it is further provided in this bequest that the children of a living daughter are to take her share, the fund must be divided *per stirpes* among his living children and the descendants of his deceased children. *Woods v. Woods*, 420.

Vide "Construction of a Will," 9; "Descents"; "Executory Devise."

PLEADING.

A prayer for an equity in the alternative adverse to the main equity set up in the bill cannot be allowed. *Rankin v. Jones*, 169.

POSSESSION, ADVERSE.

Vide "Multifariousness," 2.

PRACTICE.

1. A petition to rehear a cause in this Court is too late after a decree has been signed and passed. *Robinson v. Lewis*, 25.
2. PEARSON, J. Where two years have elapsed after the forfeiture of mortgaged personal property, the right of redemption is barred, although the mortgagor died before the forfeiture, and suit was brought within two years from the appointment of an administrator. *Ibid.*
3. The wife of one claiming a part of a fund raised by a sale of land under a decree of a court of equity, of which land, it is alleged, she is a tenant in common, is a necessary party. *Howerton v. Wimbish*, 328.
4. Where land has been sold under a decree of a court of equity, and on a petition by one of the parties the fund has been ordered to be paid to him, it is not competent for one who was a party to the original petition, and who acted as a commissioner to make the sale, to file a bill *in the nature of a petition* in the Court of Equity of another county praying that a part of the fund may be paid to him on the ground that he had no notice of the interlocutory petition. *Ibid.*

Vide "Dower," 3; "Injunction," 1.

PRE-EMPTION.

Pre-emption rights secured to persons residing on Cherokee lands under the act of 1851, which have been passed on by the agent of the State and a certificate granted for the same by such

agent, may be transferred to a non-resident for a sufficient consideration, and such purchaser will be protected in this Court against a fraudulent invasion of his rights. *Barnett v. Woods*, 198.

PRESUMPTION FROM LENGTH OF TIME.

1. Where one sells by deed one-half of a share in an intestate's estate and the assignee permits ten years to elapse after a legal ascertainment of the amount of such share and the reception of the whole of it by the assignor before a suit is brought for such half, the presumption of satisfaction or abandonment will bar the claim. *Wheeler v. Smith*, 408.
2. The borrowing of a sum of money by the assignee from the assignor within the ten years, and the repayment of a part of it, has no tendency to repel the presumption. *Ibid.*
3. The declaration of the assignor when shown the deed of assignment within the ten years, "that it was not as strong against him as he thought it was," was *held* not to be sufficient to repel the presumption. *Ibid.*
4. Where a trustee is invested with an estate or an unclosed trust, no length of time will bar its recovery. *Davis v. Cotten*, 430.
5. Where a mere equitable right of action exists, it must be enforced within a reasonable time, or else for the sake of repose it will be considered as having been abandoned, released, satisfied, or in some way arranged. *Ibid.*
6. The application of the statute creating a presumption of payment, etc., does not depend upon the party's knowledge of his rights. *Ibid.*

PRIORITY IN TIME.

Vide "Equal Equities."

PRIVY IN JUDGMENT.

A bill in the nature of an attachment to subject a claim due to an absconding debtor from a third person to the payment of a judgment against such debtor will not be sustained where such debtor has only been made a party by advertisement and not by actual service on the person, because the decree asked for would not protect his debtor out of this State. *Love v. Bowen*, 49.

Vide "Subrogation," 2.

PURCHASER WITH NOTICE.

Where a purchaser might see from his title deed that his vendor had given less than one-sixth of what he was giving for the same land, it was a circumstance to put him upon inquiry, and coupled with the fact that there was another in possession than the person he was buying from, it was *held* that the purchaser under such circumstances had a notice of the prior equity of the plaintiff, sufficient at any rate to induce a court to continue an injunction against defendant's entry under a judgment and execution at law. *Webber v. Taylor*, 9.

INDEX.

PURCHASE BY A TRUSTEE AT HIS OWN SALE.

1. Where a trustee buys at his own sale, even though he may give a fair price, the *cestui que trust* has his election to treat the sale as a nullity, not because there *is* but because there *may be* fraud. *Patton v. Thompson*, 285.
2. A guardian who petitions for the sale of his ward's estate, gets an order of sale, acts as the agent of the Clerk and Master in making it, cries the sale, takes the bonds and gives the information to the Clerk and Master, on which the report is made and the sale confirmed, will not be allowed to hold the land of his ward purchased by another for him at such a sale. *Ibid.*

REDEMPTION.

Vide "Conveyance Declared a Security," 5.

REFERENCE TO A COMMISSIONER.

1. In a reference to a Clerk and Master in Equity to ascertain the value or profits of property, the general rule is that he should report his own judgment according to his belief of the testimony, and not a conclusion arrived at by averaging the sums estimated by the witnesses. *Pilkington v. Cotten*, 238.
2. The mode of ascertaining value by averaging the sums proved by the witnesses is an exception to the general rule, only to be resorted to from necessity. *Ibid.*
3. The opinion of a Clerk and Master that a slave is worth $1,200 is strongly corroborated by the fact that he hired for $150 per year, and will be sustained against the opinions of many who estimated his value at lower sums. *Ibid.*
4. Where it appears that the Master fixes a charge for hires and profits at a given sum, on the ground that interest is not to be allowed, it is no ground of exception that he does not afterwards allow interest on them. *Ibid.*

REFORMING A DEED.

1. Where a debtor makes a deed of a slave by the name of C to a creditor in satisfaction of a previously existing debt, such creditor cannot, on the allegation that another slave, J, was meant and that the wrong name was inserted, either by the fraudulent misrepresentation of the debtor or by mistake, have the aid of a court of equity to set aside a subsequent deed of trust conveying the slave J to secure *bona fide* debts, without notice of the fraud or mistake, in order that the first deed may be reformed so as to take in the slave J. *Smith v. Turrentine*, 253.
2. Equity never interferes to aid one creditor against another on the ground of mistake. *Ibid.*

REMAINDER, LIMITATION IN.

Where there is a limitation over of personal property by will after the death of a legatee for life, and such legatee dies before the testator: *Held*, that the ulterior bequest must take effect although the estate of the first legatee never vested. *Mebane v. Womack*, 293.

REMAINDER, VALUE OF.

Vide *"Ne Exeat."*

REMEDY AT LAW.

1. Where the buyer of a tract of land has a full and complete remedy on a covenant of quiet enjoyment contained in the deed he has received, he cannot sustain a bill in a court of equity to enjoin the collection of the purchase-money for a deficiency in the title. *Wilkins v. Hogue*, 479.

2. Where it appears from the bill itself that the plaintiff had a complete defense at law to a note which was not set up, equity will not interfere to stop the collection of the debt. *Champion v. Miller*, 194.

Vide "Sale of Equities," 3.

REMOTE CONTINGENCY.

A bequest made in 1818 to Mary Porter of slave property and "in case the said Mary Porter should die without issue, then in that case it is my will that the above named negro, etc., be divided among my six sons, and to the survivor," etc., gives the absolute estate to the first taker, the limitation over being too remote. *Porter v. Ross*, 196.

RENT.

Vide "Dower," 7.

RESIDUARY FUND.

Vide "Construction of a Will," 25, 26.

RETAINER.

Vide "Administrator."

SALE OF AN EQUITY UNDER AN EXECUTION.

1. The act of 1812 subjecting trust estates to sale under an execution does not embrace mere equitable "rights," but is confined to equitable "estates"; it was, therefore, *held*, first, that the *right* to have it declared in a court of equity that one has made an election to give up his own property or is bound to do so or to forfeit a legacy and to ask for a decree converting him into a trustee, is not the subject of a sale under an execution. *Nelson v. Hughes*, 33.

2. Second. That a right to ask for a decree converting A into a trustee for B on the ground that the purchase was made with B's money and for his use, is not the subject of a sale under an execution. *Ibid.*

3. Third. A trust liable to be sold by execution under the act of 1812 by the sale is converted into the legal estate, and the right to it must be asserted in a court of law and not in equity. *Ibid.*

4. The act of 1812, Rev. Stat., ch. 45, sec. 5, is to be construed strictly, and its general words must be restrained so as not to extend its operation to cases which do not come within its meaning or the mischief intended to be remedied. *Thompson v. Parker*, 475.

5. An equity of redemption, therefore, cannot under that act be sold by execution unless it be absolute, undisputed, and grow out of a perfect mortgage. *Ibid.*

6. Where there is a provision in a mortgage deed that the mortgagee may have the land discharged of the right of redemption at his election on paying a further stipulated sum, the right of redemption is not the subject of an execution sale. *Ibid.*

7. Where the subject of the mortgage is itself an equity, the equity of redemption cannot be sold under that act. *Ibid.*

SATISFACTION OF A LEGACY.

The reception of an article of the same kind as that bequeathed before the will was written is not a satisfaction of a general bequest of an article of personal property. *Woods v. Woods*, 420.

Vide "Construction of a Will," 16.

SHELLY'S CASE.

Vide "Construction of a Will," 2.

SHERIFF.

Vide "Subrogation," 2, 3; "Privy in Judgment."

SPECIFIC PERFORMANCE.

1. A specific performance will not be decreed in a court of equity as a matter of course. Where, therefore, a contract appears to be unfair, greatly unequal and oppressive on the side of defendant, the Court will withhold its aid and leave the plaintiff to such remedy as he may have in a court of law. *Lloyd v. Wheatly*, 267.

2. The compromise of a controversy wherein the legal owner of a chose in action supposed he was bound to the performance of an onerous and oppressive contract, when in truth he was not, is not such a sufficient consideration as will entitle the transferree to a decree for a specific performance. *Ibid.*

3. Where the contract sought to be enforced is hard and oppressive, this Court will not interfere to enforce a specific performance, but will leave the parties to their remedies at law. *Cannaday v. Shepard*, 224.

Vide "Partition," 7.

STATES, THE SEVERAL.

Vide "Idiot"; *"Ne Exeat."*

STATUTE OF LIMITATIONS.

1. The personal representative of a trustee constituted by a deed in trust has no right to plead the act of limitation passed in 1789 (the two-years act) nor the statute of 1826 (creating a presumption of satisfaction, etc., within *ten years*) against his *cestui que trust* calling for a settlement of the trust. *Johnston v. Overman*, 182.

2. Where a parol gift of a slave is made by a father to his son, and the son, with the knowledge and approbation of his father, bequeaths such slave and the legatee holds it under such bequest for three years and more after the son's death, he will be protected under the statute of limitations. *Woods v. Woods*, 420.

3. The statute of limitations, Rev. Stat., ch. 65, sec. 19, applies to a right of redemption arising from construction of a court of equity, and the time must be computed from the accrual of the right to sue. *Kea v. Council*, 345.

4. The owner of slaves had mortgaged them and the time for redemption was several times postponed by memoranda on the mortgage deed, and finally the right to redeem rested on the parol promise of the mortgagee to let the mortgagor redeem at any time, but after three years the property was sold by a constable who had executions against the mortgagor, by consent of the parties, on the terms of first satisfying the mortgage debt, and bought by the mortgagee, who held possession for fourteen years under that purchase, denying the right to redeem: *Held*, that the statute was a bar, and that an agreement to refer the question of redemption to arbitration, which was violated by the mortgagor, did not revive it. *Ibid.*

5. Where slaves advanced by A to his son B were on the death of this son divided between his widow and children and held adversely thereafter for three years, A, the father, is barred by the statute of limitation from afterwards reclaiming them. *Jones v. Gordon*, 352.

Vide "Dower," 2.

STOCKS.

Vide "Injunction," 5; "Tax on Dividends."

SUBROGATION.

1. A as principal and B as his surety executed a bond to C with a condition to make a title to land on the payment of the purchase-money; before the purchase-money was all paid the land was sold at sheriff's sale to satisfy executions against A, who became insolvent; C sued B for the remainder of the purchase-money and recovered it: *Held*, that B had a right to follow the land and have remuneration out of it in the hands of the purchaser at sheri's sale for the money he had thus paid. *Freeman v. Mebane*, 44.

2. A deputy sheriff collected money and failed to pay it over, which was recovered out of the sheriff's sureties on his official bond, the sheriff himself being insolvent, it was *held* that the sureties of the deputy sheriff on a bond to indemnify his principal against his delinquency in office are liable in equity to the sureties of the sheriff for the amount thus paid by them. *Brinson v. Thomas*, 414.

3. It was *held further* that all the sureties of the sheriff's bond, as well those who had not paid the money as those who had, were properly made parties to this suit. *Ibid.*

TAX ON COLLATERALS.

1. One domiciled in Canada died intestate and without issue, leaving property in this State; the brother of the intestate receives the property from the administrator appointed here: *Held*, that such distributee is liable to the tax imposed by our statute. *Alvany v. Powell*, 51.

2. Property bequeathed to Davidson College or to a church is liable to this tax before it is delivered to the legatees, although exempted by law afterwards. *Barringer v. Cowan*, 436.

TAX ON DIVIDENDS.

The act of 1854 (Rev. Code, ch. 99, sec. 20), imposing a tax on the dividends of individual holders of bank stock, is not unconstitutional. *State v. Petway*, 396.

TITLE TO LAND.

1. Where one was bound in a bond to make title to land and it appeared that the land had been granted by the State more than fifty years ago and that it had been cultivated during that time by persons coming in under the original grantees and that for the last twenty-three years they had mesne conveyances reaching down to the vendor: *Held*, that this title is good. *Rhodes v. Chandler*, 1.

2. Where a vendee, receiving a defective title from his vendor, afterwards completes it, all that he can claim from his vendor in a court of equity is the amount expended in completing his title. *Ramsour v. Shuler*, 487.

TITLE TO A CHATTEL.

Vide *"Caveat Emptor."*

TRUST SATISFIED.

Where the right of a *cestui que trust* to a trust estate is immediate and absolute, there being no ulterior limitation and no continuing duty to be performed with it by the trustee, the Court will decree the legal estate to be conveyed to those entitled. *Turnage v. Greene*, 63.

TRUSTEE, DECLARED BY COURT.

1. Where two of the heirs at law take a conveyance for land which a person was bound to convey to their deceased ancestor who died intestate, such two heirs will be declared trustees for the other heirs. *Sentill v. Robeson*, 510.

2. Where A takes a conveyance of a tract of land which B, the owner, had agreed by bond to convey to C upon special trust and confidence that he will give C the same terms of payment that he had from B, and on such payment being made that he will convey to C, and A gets possession of the bond, which enables him to get the deed from B, it was *held* that this agreement is not within the statute of frauds and that C was entitled to relief. *Cloninger v. Summit*, 513.

Vide "Breach of Trust."

TRUSTEE, NEGLIGENCE IN.

1. Where a trustee is appointed for the purpose of protecting the trust property from the debts and extravagant expenditure of the *cestui que trust*, who is to have the use of it for his life, with a limitation over, and such trustee encourages extravagance and waste in the *cestui que trust* by lending him money, becoming his surety and otherwise becoming his creditor, the Court will not give him its aid to subject the trust property to the payment of such debts, especially where the trustee has already authority to sell for reasonable and proper expenditures. *McKnight v. Wilson*, 491.

2. It is no part of the duty of a trustee appointed to sell for the payment of debts to put slaves conveyed in the trust deed out as apprentices to trades, and he is liable to account for the value of the services of such slaves during such apprenticeship. *Sparkes v. Kearney*, 481.

UNIVERSAL LEGATEE.

Vide "Construction of a Will," 6.

VALUATION.

Vide "Reference to Commissioner," 1, 2, 3, 4.

VENDEE.

Vide "Dower."

VESTED INTEREST.

1. A bequest of slaves and other personal property to the testator's wife and two children, "to remain in joint stock until my children shall have attained the age of twenty-one, then their portion to be set apart for them," conveys a vested interest in the children, the possession of which, however, is to be postponed till their arrival at the age of twenty-one. *Hathaway v. Leary*, 264.

2. Such an estate is not defeated by the death of one of the children before twenty-one, but is recoverable by his personal representative. *Ibid.*

Vide "Executor," 9.

WARRANTY OF SOUNDNESS.

Vide *"Caveat Emptor."*

WASTE.

1. A widow has a right to clear the lands assigned to her for dower for the purposes of cultivation where it is necessary for the enjoyment of the estate, provided it is done with a due regard to the proportion of wood and cleared land. *Lambeth v. Warner*, 165.

2. The clearing of sixteen acres in addition to thirty acres already cleared in a tract of two hundred and forty acres heavily timbered is not out of proportion or unreasonable as regards the rights of the remainderman. *Ibid.*

WIDOW.

Vide "Partition," 2; "Waste," 1.

WILL.

Vide "Codicil."